(3)

COURT FEE 5 RS. भारत INDIA पांच रुपये FIVE RUPEES CANCELLED

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 2410 / 2005

Petitioners : 1. Suresh Kumar
(Defendant no.1 & 2) S/o Dhanaram Lodhi
Aged about 38 years,
R/o Village Marutola Kala,
Tehsil – Khairagarh,
Dist : Rajnandgaon-(C.G.)

2. Santosh
S/o Dheernath Lodhi,
Aged about 28 years,
R/o Marutola Kala,
Tehsil – Khairagarh,
Dist : Rajnandgaon-(C.G.)

P.R. No. 2226/05
Presented by Shri D.S. Baghel
dated 13.05.05

Versus

Respondents : 1. Ram Kumar
(Plaintiffs) S/o Godavari Lal Shrivastava,
aged about 77 years,
R/o Marutola Kala,
Tehsil – Khairagarh,
Dist : Rajnandgaon-(C.G.)
At present R/o Bakshi Marg
Khairagarh,Tehsil– Khairagarh,
Through – Brijesh Shrivastava
S/o Ram Kumar Shrivastava,
R/o Marutola Kala,
Tehsil – Khairagarh,
Dist : Rajnandgaon-(C.G.)

2. State of Chhattisgarh
Through–Collector
Rajnandgaon,
Dist : Rajnandgaon-(C.G.)

WRIT PETITION U/A 227 OF THE CONSTITUTION OF INDIA

1. Particulars of the Petitioners.

As per cause title.

2. Particulars of the Respondents.

As per cause title.

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH

CORAM: HON'BLE MR. ABHAY MANOHAR SAPRE & HON'BLE MR. G. MINHAJUDDIN, JJ.

Writ Petition No.2410/2005

Petitioners (Defendants No.1 & 2) : Suresh Kumar and another

Versus

Respondents (Plaintiffs) : Ram Kumar and another

Writ Petition under Article 227 of the Constitution of India

Present: Shri RS Baghel, counsel for the petitioners.

ORAL ORDER
(Passed on 1st August, 2012)

Per Abhay Manohar Sapre, J.

1. This is a writ petition filed by the defendants No.1 & 2 of Civil Suit No.28-A/04 under Article 227 of the Constitution of India, questioning the legality and propriety of the appellate order dated 5.2.2005 (Annexure P-2) passed in Misc. Civil Appeal No.6/2004 by the Additional District Judge, Khairagarh, Distt. Rajnandgaon, which in turn arises out of the interim order dated 20.11.2004 (Annexure P-1) passed by the Civil Judge, Class-I, Khairagarh in Civil Suit No. 28-A/04.

2. By the impugned order, the learned appellate Judge allowed the appeal filed by the plaintiff and while setting aside the order passed by the learned trial Judge, which had dismissed the plaintiff's application under Order 39 Rule 1 & 2 of the CPC, allowed the application so made by the plaintiff and granted temporary injunction in favour of the plaintiff and against the defendants restraining them from interfering in the plaintiff's possession over the suit land during pendency of the suit.

3. So the question that arises for consideration in this writ petition is whether the learned appellate Court was justified in granting injunction in plaintiff's favour by allowing his application under Order 39 Rule 1 & 2 of the CPC?

4. Having heard learned counsel for the petitioners and on perusal of the record of the case, we are of the opinion that at this stage, we only wish to direct the learned trial Judge to dispose of the Civil Suit bearing No. 28-A/04 filed by the plaintiff against the petitioners herein, if not so far decided, strictly in accordance with law on merits without being influenced by any of the findings recorded by the first appellate Court in the impugned appellate order. In other words, the trial Judge is required to decide the suit on the basis of evidence adduced by the parties in the suit and not to be swayed away by the observations made by the appellate Court while deciding the injunction application.

5. It is with these observations, we decline to interfere in the impugned order passed by the learned appellate Judge and direct the learned trial Judge to ensure expeditious disposal of the civil suit bearing No.28-A/04 on its own merits, if not so far decided, keeping in view the observations made above.

6. In case, the suit stands already decided by the learned trial Judge and is no longer pending, then these directions need not be complied with.

7. As a consequence, the writ petition fails and is dismissed. No cost.

Sd/-
Abhay Manohar Sapre
Judge

Sd/-
G. Minhajuddin
Judge